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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 27th September 2007

No. 11097—II/I(S)-24/2005-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 28th August 2007 in I. D. Case No. 25 of 2005 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial disputes between the Management of Sandeep Bakshi, Contractor of M/s Orissa State Warehousing Corporation, A. Kantapali, district Sambalpur/Superintendent, Orissa State Warehousing Corporation Godown, A. Kantapali, Sambalpur and their workman represented through Shri Ranjan Mugri, President, A Kantapali Warehousing Workers Union, At/Post A. Kantapali, district Sambalpur was referred for adjudication is hereby published as in the scheduled below:

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER, LABOUR COURT SAMBALPUR

INDUSTRIAL DISPUTE CASE NO. 25 OF 2005

Dated the 28th August 2007

Present:

Shri P. K. Mahapatro, LL.B.,
Presiding Officer,
Labour Court, Sambalpur.

Between:

1. The Management of
Shri Sandeep Bakshi,
Contractor of M/s. Orissa State Ware-
housing Corporation,
A. Kantapali, Sambalpur. First Party—Managements
2. The Superintendent,
Orissa State Warehousing Corporation
Godown, A. Kantapali,
District Sambalpur.

And

Their Workmen
represented through
Shri Ranjan Mugri, President,
A. Kantapali Warehousing Workers Union,
At/P. O. A. Kantapali,
Dist. Sambalpur.

.. Second Party—Workmen

Advocates:
For the First Party—Management No. 1 .. Shri R. N. Debata, Advocate
For the First Party—Management No. 2 .. Shri P. K. Pradhan, Advocate

For the Second Party—Workmen .. Shri Trilochan Pattanaik,
Advocate.

ANALYSIS

This case arises out of the reference made by the Government of Orissa, Labour & Employment Department under Section 10 & 12 of the Industrial Disputes Act, 1947 vide memo No. 10195 (6), dated the 26th November 2005 for adjudication scheduled below:

"Whether the termination of services of Shri Ranjan Mugri and 74 other workmen by way of refusal of employment (list enclosed as Annexure-C) with effect from the 5th October 2004 by Shri Sandeep Bakshi, Contractor of Orissa State Warehousing Corporation, A. Kantapali, Dist. Sambalpur is legal and/or justified ? If not, what relief are they entitled to ?".

2. The workmen under the leadership of Ranjan Mugri have moved this Court by filing a claim statement that they were working under the management since the 25th November 2003 for loading and unloading rice bags belonging to Food Corporation of India from the Godown of State Warehousing Corporation situated at A. Kantapali and then they have formed an Union and demanded more wages to which the management have denied, but their demand was taken up by the District Labour Officer who fixed up a joint enquiry on the 5th October 2004 and during the course of the enquiry and conciliation proceeding the Contractor (management No. 1) verbally terminated their services on the sole ground that they had formed a Union and then the subsequent enquiry conducted by the District Labour Officer was also not up to the mark, as a result, they were thrown out of employment and the District Labour Officer presented a failure report to the Government. Thereafter the present reference was sent to this Court for adjudication.

3. Both the managements have filed a joint written statement wherein they have challenged the stand of the workmen with the specific pleading that a Contractor namely, Sandeep Bakshi was appointed by the Managing Director of Orissa State Warehousing Corporation, Bhubaneswar on the 12th December 2003 and with regard to the workers engaged for the purpose a Muster Roll and Register of wages were being managed by them and even in the Adult Register which is regularly being maintained by the Contractor, the names of the present workmen are not figured as the Labourers and accordingly their claim that the management removed 75 workers cannot be easily swallowed. The Superintendent and the Contractor who are the Managements in this case have also denied the other pleas advanced by the workmen. Their case is that there is no need of any retrenchment as because all of them were not working under them at any point of time. To sum up they have denied the claim of the workmen in toto.

4. The workmen have filed a rejoinder wherein they have averred that the Superintendent had joined the duty on the 16th September 2004 and the present workmen were retrenched on the 30th September 2004. They have further reiterated their previous claim and specifically pleaded that they be employed with full back wages.

ISSUES

5. By taking note of the pleadings of both the parties the following issues are settled in this case for adjudication.

- (i) "Whether the workmen are the 'workmen' within the sweep of the Industrial Disputes Act ?
- (ii) Whether the termination of services of Shri Ranjan Mugri and 74 other workmen by way of refusal of employment with effect from 5th October 2004 by Shri Sandeep Bakshi, Contractor of Orissa State Warehousing Corporation, At A. Kantapali, Dist. Sambalpur is legal and/or justified ?
- (iii) If not, to what relief they are entitled ?"

6. During the course of the hearing Ranjan Mugri is figured as the workmen Witness No. 1 and Narad Luha is examined as workmen Witness No. 2. They have not filed any document to substantiate their case.

An employee of the Contractor namely, Chandan Nayak is examined as the only Witness from the side of the management. He has filed the Adult Register to substantiate the plea. The same is marked as Ext. A in this case.

FINDINGS

7. *Issue Nos. (i) and (ii)*—Both the issues are taken up together as those are interlinked. It is the specific challenge of the management that the 75 workmen were not working under the management as a result, they cannot be termed as 'workmen' as visualised under the Industrial Disputes Act. Admittedly in the reference there is name of one person namely, Ranjan Mugri. No list is furnished along with it. During the course of hearing the workmen have filed a list on demand by the management, but the list presented at the belated stage cannot be the guiding factor to answer the reference. As per law it is for the persons putting forward the claim to establish the facts and circumstances supporting their claim. As to how the names furnished by Ranjan Mugri can be accepted to be the workmen working under the management is a big issue for this Court and in my opinion the same could not be explained in any manner by the present workmen. The evidence of Ranjan Mugri in this regard is also very fantastic. In his evidence, he has admitted that he has not filed any document or paper to show that he was elected as the President of the Union and the said election was done as per law. His evidence in cross-examination Para. 19 is also lending support to conclude that he has foggiest idea in this regard. According to him, a red card was issued to them for entering inside the premises. But very surprisingly, the same are not produced by the workmen to suffice their case. To sum up, the workmen have not filed any reliable evidence to conclude that the workers named by them in the list were workers working under the management. So, the first issue that the present workmen are the workmen, so far this reference is concerned is still in anomalous position and they have failed to suffice it during the course of hearing.

8. As per law pleading in an industrial adjudication cannot be strictly construed but in it, the important things must be available, so that the other party can meet it. In the claim statement there is no mention of names of the workmen. The contents of the claim statement is also contradictory in nature. It is the specific case of the workmen that they had presented a representation to the management for their wage hike and handed over a copy of the same to the District Labour Officer on the 1st September 2004 and after receiving it, the District Labour Officer fixed up a joint enquiry on the 5th October 2004. But surprisingly in Para. 9 it is averred by them that during the enquiry and conciliation proceeding the contractor orally terminated their services and the retrenchment took place on the 30th September 2004. When the joint enquiry date was fixed on 5th October 2004, it is hard to believe

that during the conciliation proceeding the oral retrenchment took place. The date, the 30th September 2004 cannot be treated as the day by which the conciliation proceeding has reached the enquiry stages. As to how and from where the workers named in the list were brought to the forefront is a surprising aspect and in absence of any good ground the same cannot be accepted. When I have entertained doubt regarding their status, the subsequent claim that they have been retrenched cannot be accepted. So both the issues are answered against the workmen.

9. *Issue No. (ii)*—In view of my above conclusion, the workmen are not entitled to get any benefit from the management. Hence the following Award:

AWARD

The reference in its present forum could not be answered though both the parties have contested and participated in it. As such the Government is at liberty to do the needful.

Dictated and corrected by me.

P. K. MAHAPATRO

28-8-2007

Presiding Officer
Labour Court
Sambalpur

P. K. MAHAPATRO

28-8-2007

Presiding Officer
Labour Court
Sambalpur

By order of the Governor

N. C. RAY

Under-Secretary to Government